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**Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General**

# Annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala

## Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala (OHCHR-Guatemala).

In the present report the High Commissioner describes the human rights situation in Guatemala, with a special focus on: the strengthening of the justice system, transitional justice and access to justice for indigenous peoples; issues related to security, including the situation of people deprived of liberty; the situation of human rights defenders, journalists, indigenous peoples, women, and lesbian, gay, bisexual, transgender and intersex people; and economic, social and environmental rights. He describes the activities of OHCHR-Guatemala and concludes with a series of recommendations.

OHCHR-Guatemala continued to implement the second phase of the Maya Programme, funded by Norway, helping to strengthen indigenous peoples' rights. It also continued to implement a project, funded by the European Union, for protecting human rights defenders. Further, OHCHR-Guatemala developed a project, funded by Germany, on the situation of human rights of migrants and internally displaced people.

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# Annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala*

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* Circulated in the language of submission and Spanish only.

# I. Introduction

1. On 10 January 2005, the United Nations High Commissioner for Human Rights signed an agreement with the Government of Guatemala to establish a country office (OHCHR-Guatemala). In March 2014 that agreement was extended for a third time, for three years. OHCHR-Guatemala monitors the human rights situation in the country and advises State institutions and civil society in order to strengthen the promotion and protection of human rights.

# II. National context

2. Twenty years since the signing of the peace agreements, 2016 started with a certain optimism, following the unprecedented, massive citizen mobilizations that had marked the 2015 social and political context and that had resulted in the resignation of high-level government officials under investigation for corruption. President Jimmy Morales took power in January, having based his electoral campaign on an anti-corruption platform. In his speech on the day he took office, President Morales affirmed the need to make improvements in the areas of health and education and to address chronic malnutrition.

3. The Attorney General's Office, in cooperation with the International Commission against Impunity in Guatemala (CICIG), has continued to achieve significant results in the fight against corruption and impunity. The opening of a specialized unit on impunity in the western region of the country, which has the country's largest indigenous population, could help provide access to justice and consolidate progress made. [1] Investigations and prosecutions that have been carried out have targeted criminal structures allegedly involved in illicit electoral financing, unlawful association, money laundering and fraud, among other charges. [2] Those prosecuted include public officials of the three State branches, including two magistrates of the Supreme Court of Justice, as well as businessmen.

4. These advances have helped pave the way for a broad public discussion for reforms to guarantee the independence and professionalism of the judiciary, led by the presidents of the three State branches and with the active and inclusive participation of civil society organizations, indigenous authorities and representatives, the private sector and others. The reforms have been based on proposals made since the signing of the peace agreements and have helped respond to demands raised during the mobilizations of citizens in 2015.

5. As a result of that dialogue, in October a draft bill was presented to Congress with the support of 53 members — far above the minimum required by law. The bill contained several proposals for constitutional reform in the area of justice (see para. 15 below). The drafting process was supported by a technical secretariat composed of officials from the Office of the Ombudsman for Human Rights, the Attorney General's Office and CICIG, as well as representatives of OHCHR-Guatemala and the office of the United Nations Resident Coordinator in Guatemala.

6. Guatemala has made progress in cases related to transitional justice. In January, 14 ex-military officials at all levels of the chain of command, including Manuel Benedicto Lucas García, a former head of military intelligence, were detained on charges of crimes

[1] OHCHR-Guatemala, press release, 27 October 2016. Available from www.ohchr.org.gt/documentos/comunicados/20161027_Inauguracion_FECI_CICIG_Quetzaltenango.pdf.

[2] International Commission against Impunity in Guatemala, ninth annual report. Available from www.cicig.org/uploads/img/2016/others/COM_087_20161124_INFORME_ANUAL_2016.pdf.

against humanity and enforced disappearance (commonly known as the CREOMPAZ case, in reference to the Spanish acronym for the regional command for training in peacekeeping operations). Eight of those officials are currently being prosecuted for crimes carried out between 1981 and 1984 at the former military base 21 in Cobán, Alta Verapaz, where the remains of over 500 people, mainly of indigenous Achi, Q'eq'chi, Poqomchi', Ixil and K'iche descent, were exhumed from 83 mass graves.

7. In addition, in February, two ex-military officers were sentenced in the Sepur Zarco case for crimes against humanity in the form of sexual violence, murder and enforced disappearance against Q'eq'chi women. This is the first case at the national level involving sexual violence and domestic slavery against indigenous women during the internal armed conflict.[3] In its judgment, the court ruled that the authorities had converted the victims into objects of war in order to disable and defeat people considered to be enemies.[4]

8. In order to ensure that progress made in cases of impunity for past and present crimes is sustainable, it is crucial to ensure that judicial authorities carry out their work in a secure environment. The High Commissioner is seriously concerned about attacks and threats against judicial authorities, including against Thelma Aldana, the Attorney General, and Miguel Ángel Gálvez, a judge presiding over many high-profile corruption cases. The Inter-American Commission on Human Rights requested precautionary measures for both officials, in July and August, respectively.

9. It is also necessary to ensure robust democratic and participatory decision-making institutions. In April, Congress approved reforms to the Electoral and Political Parties Law that will help in part strengthen democratic procedures within political parties and tighten campaign financing rules.[5] However, as a sign of the ongoing and historic exclusion faced by women and indigenous peoples in national political spheres, Congress rejected proposed measures that would have ensured their inclusion in electoral ballots.[6] In September, the President presented to Congress another draft bill reintroducing measures in favour of the participation of women and indigenous peoples.[7]

10. The murder of Byron Lima Oliva, who led a criminal network from the Pavón prison, where he was serving a sentence for the murder of Bishop Juan Gerardi in 1998,[8] brought to light serious challenges in reducing violent crime and effectively controlling and dismantling criminal structures both within and outside of detention centres.

11. In both rural and urban areas, indigenous peoples and representatives of civil society, including new actors on social media, have continued to demand government accountability for outstanding human rights concerns. In April, thousands of Guatemalans, mostly indigenous peoples and campesinos, marched to raise their concerns regarding water use, including the deviation and contamination of rivers by private companies for monoculture activities and hydroelectric projects.

12. In this context, threats and attacks against, and stigmatization of, human rights defenders and journalists have intensified. Some sectors known for expressing hostile views on human rights have made public statements to discredit the international community, including the Representative of OHCHR-Guatemala, portraying members of that community as "interfering" in domestic affairs.

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[3] Case supported by the Maya Programme.

[4] File C-01076-2012-00021, judgment, 26 February 2016, p. 494.

[5] Decree 26-2016.

[6] See A/HRC/31/3/Add.1, para. 10.

[7] Draft bill 5158.

[8] See A/HRC/28/3/Add.1 and Corr.2, para. 35.

13. In the framework of the Sustainable Development Goals, Guatemala still remains one of the world's most unequal countries in terms of health, education and income distribution.[9] Poverty rates, especially of indigenous peoples, remain troublingly high,[10] despite a projected 3.7 per cent growth rate in 2016 of the gross domestic product.[11]

# III. Advances and ongoing challenges in human rights

## A. Justice

### 1. Strengthening of the justice system, including its independence

14. The High Commissioner acknowledges the important progress made in 2016 towards strengthening the justice system and in combating impunity and corruption (see paras. 3-7 above).[12] Nevertheless, numerous structural problems persist, including significant delays in the processing of criminal cases; such delays also are evident in labour, civil and family law cases. Numerous obstacles to accessing justice persist, especially for indigenous peoples, women, persons with disabilities and the poor (see paras. 22-23 below).

15. The constitutional reform proposals in the area of justice presented to Congress in October (see para. 5 above), which are based on international human rights standards, include efforts to: improve access to justice, including for women and indigenous peoples; strengthen the independence and impartiality of the judiciary, by separating the administrative and jurisdictional functions of the Supreme Court; depoliticize the selection of judicial officials; and constitutionally recognize indigenous legal jurisdiction (see para. 24 below). In their third reading in Congress, the reforms were suspended during discussions on the recognition of indigenous jurisdiction. If adopted by two-thirds of the members of Congress during the next session, the reforms will subsequently be submitted to a referendum for ratification.

16. Pending approval of the constitutional reforms, Congress adopted amendments to the foundational law of the Attorney General's Office (decree 18-2016) and the law on the judicial career (decree 32-2016),[13] which help to strengthen judicial independence, the professional career track, work-performance evaluations and disciplinary proceedings for public prosecutors and the judiciary. OHCHR-Guatemala, together with CICIG, provided technical assistance to Congress throughout these legislative processes.[14] Additionally, alongside civil society organizations, it continued to provide technical assistance to the congressional working group on security and justice to develop proposals to reform other key laws to strengthen the justice system, including the laws on injunction (*amparo*), on habeas corpus and constitutionality, and on impeachment.[15]

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[9] United Nations Development Programme, national human development report for Guatemala for the period 2015/16, p. 20.

[10] Ibid., pp. 18 and 34. See also A/HRC/31/3/Add.1, para. 53.

[11] See https://www.banguat.gob.gt/estaeco/boletin/envolver.asp?karchivo=boescu51.

[12] Press briefing note presented on behalf of the High Commissioner, 7 October 2016. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20652&LangID=E.

[13] See A/HRC/28/3/Add.1 and Corr.2, para. 22, and A/HRC/31/3/Add.1, paras. 12 and 16.

[14] See A/HRC/10/31/Add.1, paras. 48 and 105 (c); A/HRC/13/26/Add.1, paras. 32 and 38; A/HRC/16/20/Add.1 and Corr.1, para. 31; A/HRC/19/21/Add.1, paras. 28, 29 and 31; A/HRC/22/17/Add.1, paras. 32 and 100 (d) and (e); A/HRC/25/19/Add.1, paras. 32 and 96 (e); A/HRC/28/3/Add.1 and Corr.2, paras. 22 and 99 (a); and A/HRC/31/3/Add.1, paras. 16 and 94 (b).

[15] See A/HRC/31/3/Add.1, para. 12.

17. An important step was the presentation of draft bill 5100 of 2016 on the abolition of the death penalty, put forward by the President of the Congressional Human Rights Commission, with the participation of civil society and technical assistance from OHCHR-Guatemala.[16] Importantly, the Constitutional Court declared unconstitutional the application of the death penalty in cases of qualified homicide.[17]

### 2. Transitional justice

18. Important progress has continued to be made in criminal investigations and prosecutions by the Attorney General's Office into violations of human rights during the armed conflict, in particular in the cases described in paragraphs 6 and 7 above.

19. In January, hearings commenced in the case involving the disappearance in 1981 of 14-year-old Marco Antonio Molina Theissen. Five ex-military officials have been charged with enforced disappearance and crimes against humanity. Three of them are also being prosecuted for the rape of the victim's sister. In 2004, the Government recognized its responsibility for the boy's disappearance in a case before the Inter-American Court of Human Rights.[18]

20. In March, hearings recommenced in the case of genocide and crimes against humanity committed against the Ixil indigenous peoples during the armed conflict. Those charged are José Mauricio Rodríguez Sánchez, former head of military intelligence, and Efraín Ríos Montt, former Head of State. Nevertheless, the process has not yet made any progress as it is still necessary to initiate a separate criminal procedure for Mr. Ríos Montt, following a declaration last year by a civil court that he was unfit to stand trial owing to dementia.[19] The delay in the trials, which have been ongoing for more than two years, is a serious matter of concern.[20]

21. Troublingly, the reduction of the budget of the National Reparations Programme by 70 per cent in 2016 reduced the Government's ability to implement reparations measures, as compared to other years.[21] In one positive development, reparations were provided to individuals affected by the construction of the Chixoy hydroelectric dam: 1,246 families have received individual reparations.[22] Still pending are collective reparations regarding the improvement of basic services for victims, which should be made in consultation with the victims to ensure that they are culturally appropriate and that they respond to the victims' needs.

### 3. Justice and indigenous peoples

22. There continue to be barriers in the effective access of indigenous peoples to the ordinary justice system.[23] The national dialogue on justice reform included an in-depth discussion about how to ensure that the ordinary judicial system adequately reflects the multicultural reality of the country, both in terms of indigenous peoples' access to and their representation within the ordinary justice system.

23. The proposed constitutional reforms submitted to Congress include provisions to recognize indigenous legal systems, although those provisions were the focus of the most

[16] See A/HRC/16/20/Add.1, para. 23.
[17] File 1097-2015, judgment, 11 February 2016.
[18] *Molina Theissen vs. Guatemala*, judgment, 4 May 2004, para. 31.
[19] See A/HRC/31/3/Add.1, para. 19.
[20] Ibid.
[21] Ibid., para. 23.
[22] Ibid., para. 22.
[23] Ibid., para. 24, and A/HRC/28/3/Add.1 and Corr.2, para. 31.

resistance during the discussions (see para. 15 above). The High Commissioner recognizes the important role that indigenous customary justice systems play in providing culturally and linguistically appropriate access to justice for indigenous peoples, especially in rural areas, with positive impacts in respect of the decongestion of the ordinary justice system and with regard to violence prevention and reduction.

24. In March, the Constitutional Court issued a judgment recognizing legal pluralism and affirming the coexistence of State and indigenous legal systems in Guatemala.[24] The Court affirmed that indigenous justice systems recognized authorities, norms and procedures in accordance with human rights; that decisions made by indigenous authorities can be subject to revision for compliance with constitutional provisions; and that in Guatemala there are guidelines for coordination and cooperation between both legal systems. It also held that international human rights standards on that subject were recognized as part of the national constitution (*bloque constitucional*).

25. The Attorney General's Office finalized the development of an internal policy on access to justice for indigenous peoples. It also developed a specific diagnostic study on the problems faced by the Garifuna and Xinca peoples in the area of access to justice. The School for Legal Studies, with the support of the judiciary's unit on indigenous issues, prepared an educational module on the human rights of indigenous peoples as part of the legal studies undertaken by judges and magistrates.[25]

## B. Security

### 1. Violence and its consequences

26. Despite a modest reduction in the number of violent deaths over the past two years, Guatemala continues to face serious problems of violence and organized crime, especially in the departments of Guatemala, Escuintla and Izabal.[26] As at November 2016, 4,579 violent deaths, including of 635 women (72 more than the previous year) had been recorded.[27] The leading causes of the deaths were firearms (in the cases of 3,405 persons, including 463 women) and asphyxiation (in the cases of 714 persons, including 122 women). In several cases linked to extortion, 44 persons, including 15 women, had been killed by dismemberment or beheading.[28] Disturbingly, human body parts were found in public spaces in various municipalities. In 2016, lynchings resulted in the deaths of 16 people, including 1 woman, and the injury of 73 people, including 3 women.[29]

27. Despite State efforts, violence and organized crime have had an impact on migration outside Guatemala and on internal displacement within the country.[30] According to the Office of the United Nations High Commissioner for Refugees (UNHCR), requests for refugee and asylum status by Guatemalans abroad almost doubled from 23,288 in 2014 to

[24] File 1467-2014, judgment, 10 March 2016, pp. 14, 20 and 21. See also A/HRC/25/19/Add.1, para. 36; and A/HRC/28/3/Add.1 and Corr.2, para. 32.

[25] Supported by the Maya Programme.

[26] National Institute of Forensic Sciences, data from January to November 2016 provided to OHCHR. See also A/HRC/31/3/Add.1, para. 47.

[27] National Institute of Forensic Sciences, data from January to November 2016.

[28] National Institute of Forensic Sciences, data from January to November 2016.

[29] Ombudsman for Human Rights, information provided to OHCHR, 11 November 2016.

[30] International Centre for the Human Rights of Migrants, "Forced displacement and protection needs generated by new forms of crime and violence in Central America" (May 2012), p. 18.

40,738 in 2015.[31] The Migration Code, which was adopted by Congress in September,[32] establishes a human rights-based approach and creates new institutions to address problems faced by migrants, providing for, inter alia, protection for non-accompanied children, women victims of trafficking, victims of torture and refugees.

### 2. Public and private security

28. There has been an important increase in the number of National Civil Police officers sanctioned for infractions (2,807 as at September, as compared to 1,168 in the previous year), including for abuse of authority, aggression, extortion and drug trafficking.[33] As at September, the Inspector General of the National Civil Police had carried out 20,101 internal reviews, as compared to 7,464 in 2015. The annual salary bonus for police officers was increased, helping to dignify the profession, with possible positive impacts on preventing police corruption. However, the base salary has not been raised. Still outstanding are reforms to the law on police to ensure the implementation of the new police model envisioned in the peace agreements,[34] including the strengthening of internal controls and establishment of a professional career track.

29. Despite provisions in the peace agreements regarding the role of the military, defined exclusively as defending the sovereignty and territorial integrity of Guatemala,[35] the Government has not taken perceptible steps to withdraw the military from civil security tasks. There is a need to ensure thorough investigations, as well as guarantees for non-repetition, for example in the case of the military's searches of students in the San José Nacahuil High School in February, and that of the reported sexual abuse against a female minor by a soldier in the Adolfo V. Hall institute in Retalhuleu in April.

30. As at November, 173 private security companies were already, or were in the process of becoming, compliant with the law that regulates private security services (decree 52-2010) — up from 163 in 2015.[36] However, 37 per cent of companies are still not compliant with the law. The Directorate-General of Private Security Services has taken some positive steps, such as increasing the monitoring of private security companies and adopting internal manuals for reviewing the compliance of such companies with the law. Nevertheless, there are serious challenges in State control over these companies, including with relation to arms control, illegal arms trafficking and control of the working conditions of the private security agents.

### 3. Persons deprived of liberty

31. There is an urgent need to address the structural problems of the penitentiary system,[37] including chronic overcrowding (currently at 219 per cent),[38] inadequate infrastructure, and failure to ensure the security of those detained, which has led to 54

[31] UNHCR Global Trends: Forced Displacement in 2014, p. 50, and UNHCR Global Trends: Forced Displacement in 2015, p. 63. Available from www.unhcr.org/global-trends-2015.html.

[32] Decree 44-2016.

[33] Ministry of the Interior, information provided to OHCHR, 7 October 2016.

[34] See the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society, para. 21.

[35] Ibid., para. 35.

[36] Directorate-General of Private Security Services, lists of private security companies authorized under governmental agreement. Available from http://digessp.gob.gt/wp-content/uploads/2016/04/acuerdo-gubernativo-07102016.pdf; http://digessp.gob.gt/wp-content/uploads/2016/04/Acuerdo-Ministerial-21102016-Sheet1.pdf.

[37] See A/HRC/28/3/Add.1 and Corr.2, para. 35.

[38] Information provided to OHCHR by the Ombudsman for Human Rights, 25 October 2016.

violent deaths within the penitentiary system as at October.[39] The High Commissioner is concerned that there are only eight doctors covering the prison population of approximately 20,000, although he takes note that the authorities of the penitentiary system are currently in the process of hiring more.[40] The State constructed a new unit for 40 people inside the Women's Orientation Centre, where imprisoned mothers can live with their children if the children are under 5 years old.

32. The overuse of pretrial detention was the subject of a study by OHCHR-Guatemala and the Ombudsman for Human Rights. The study found that 46 per cent of the total prison population, 10 per cent of whom are women, are awaiting sentencing. Factors contributing to the non-exceptional application of pretrial detention include legal barriers in the Criminal Code and pressure by the media and public opinion in favour of incarceration. The Attorney General's Office reported that over half of those in pretrial detention had spent more than a year awaiting a final resolution, with one third waiting over three years.[41]

33. The National Office for the Prevention of Torture has demonstrated major shortcomings in its handling of its work, leading to allegations of, inter alia, serious mismanagement of funds.[42] Draft amendments to the law on the national mechanism on the prevention of torture have been presented to Congress, although the proposals have been criticized by civil society. The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) has recommended postponing the discussion of the amendments until all sectors involved have been heard. A transparent and independent selection of National Office rapporteurs must be ensured for the next cycle.

34. Despite action taken in follow up to the request issued by the Inter-American Commission on Human Rights for precautionary measures (PM 370/12) in relation to the Federico Mora mental health hospital,[43] such as the separation of convicted prisoners and persons with mental disabilities, the Committee on the Rights of Persons with Disabilities concluded that the measures had not been adequate to protect persons with disabilities.[44]

## C. Human rights defenders

### 1. Attacks and protection measures

35. In 2016, the Unit for the Protection of Human Rights Defenders of Guatemala, a non-governmental organization, registered the killings of 14 people, including 4 women, and 223 attacks against human rights defenders (78 against women), including against its own organization.[45] Those targeted included journalists, indigenous peoples, trade unionists and defenders working on transitional justice cases and the defence of lands, territories and resources. The attacks occurred within a broader context of the stigmatization and discrediting, especially on social media, of human rights defenders and their work. This was the case of Iduvina Hernández, who was harassed on social media in relation to her work on the Molina Theissen case.

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[39] Information provided to OHCHR by Penitentiary System authorities, 26 October 2016.

[40] Information provided to OHCHR by the Ombudsman for Human Rights, 24 November 2016.

[41] Data from the period 2011 to end September 2016.

[42] Information provided by the Ombudsman for Human Rights on supervision of the National Office on the Prevention of Torture, 12 August 2016. See also A/HRC/31/3/Add.1, para. 29.

[43] See A/HRC/31/3/Add.1, para. 28.

[44] See CRPD/C/GTM/CO/1, para. 44. See also CAT/C/GTM/CO/5-6, para. 21.

[45] Information for the period January to November 2016. Available from http://udefegua.org/wp-content/uploads/2015/08/Mensual-Diciembre-2016.pdf.

36. OHCHR-Guatemala documented cases of violations of the rights of human rights defenders, including in relation to the case of Daniel Choc, killed in June allegedly in the context of an indigenous land claim in San Juan Tres Ríos, Alta Verapaz. The Comité de Campesinos del Altiplano has been spearheading the case; at least two members of the organization, including an indigenous woman, received serious death threats. OHCHR-Guatemala also followed the case of an attack in September against a human rights defender by a group of armed men. The defender was allegedly targeted as a result of his work, on behalf of the Comité de Unidad Campesina, relating to land resettlement claims for indigenous families displaced in the Polochic Valley. The Attorney General's Office is investigating these cases.

37. The State has developed a process for receiving and analysing cases and for issuing protection measures for human rights defenders. However, the Personal Protection and Security Division of the National Civil Police still does not document and follow up on cases at a level sufficient to assess continued risk levels and to determine the effectiveness of security measures. Further, the risk analysis process does not always adequately take into account the culture and gender of the human rights defenders, or the broader social and political contexts in which they work.

38. The High Commissioner is concerned that the governmental agreement on the mandate of the Unit for the Analysis of Attacks against Human Rights Defenders of the Ministry of the Interior has not been renewed since its expiration in January. The revision of the Unit's internal working methods needs to continue, in order to strengthen the Unit's analysis and the Government's protection of human rights defenders. The High Commissioner notes as positive that several civil society organizations are once again starting to participate in the Unit's meetings, after having refused to participate for several years due to concerns about the Unit's effectiveness.

39. In September, COPREDEH launched the development of a public policy on human rights defenders, a process that has included, and will continue to include, consultations with civil society, which represents a step towards the implementation of a judgment of the Inter-American Court of Human Rights.[46] The Attorney General's Office is developing an internal policy on the investigation of crimes against human rights defenders, which could help ensure that such cases are analysed with a differentiated approach.

### 2. Misuse of criminal procedures

40. OHCHR-Guatemala remains concerned over the spurious legal cases brought against human rights defenders as a measure to control, prevent or sanction their work.[47] Such misuse is occurring especially within the context of social protests regarding lands, territories and natural resources. In addition to infringing the rights of due process and other rights, such practices can have ripple effects throughout communities, resulting in a climate of fear that can impede the promotion and protection of human rights, as well as serious cases of social and cultural disintegration.

41. In July, seven human rights defenders from the Huehuetenango region, mostly ancestral indigenous leaders, were absolved of criminal charges brought against them for acts carried out in defence of their lands and resources.[48] The defendants had remained in pretrial detention for over a year following numerous delays in their criminal processes, which were marked by irregularities. Noting that there had been insufficient elements to

[46] *Human Rights Defender et al. v. Guatemala*, judgment of 28 August 2014.
[47] See A/HRC/31/3/Add.1, para. 43.
[48] Ibid.

sustain the criminal charges, in its judgment the court affirmed that penal procedures had been used to criminalize actions taken by ancestral authorities to defend their rights.[49]

42. OHCHR-Guatemala is concerned about the case of San Pablo, San Marcos, where 11 human rights defenders and ancestral indigenous authorities are still being held in pretrial detention. Some have been held for over a year, accused in 2015 of serious charges, including kidnapping, related to acts challenging the presence of a hydroelectric project affecting their communities. Also of concern are charges that have been brought against workers of the San Gregorio Piedra Parada estate in Coatepeque, Quetzaltenango, as well as their representatives, in the context of labour-related protests (see para. 71 below).

## D. Rights of indigenous peoples

### 1. Participation and discrimination

43. Building an equal society in Guatemala is possible only by ensuring the effective enjoyment of the rights of indigenous peoples and taking concerted measures to combat the racial discrimination and exclusion that they face. Twenty years later, the path laid out by the peace agreements, in particular the Agreement on Identity and Rights of Indigenous Peoples, continues to be relevant for addressing outstanding concerns faced by indigenous peoples.

44. The Constitutional Court issued 11 decisions on indigenous peoples rights in 2016: 6 on the State obligation to undertake consultations with indigenous peoples;[50] 3 dealing with communal lands (see para. 47 below);[51] 1 on bilingual and intercultural education; [52] and 1 related to the recognition of indigenous legal systems (see para. 24 above).[53] The Supreme Court issued a decision in favour of indigenous midwives regarding the recognition of access to culturally appropriate reproductive health services.[54]

45. Congress still has not advanced in the approval of legal initiatives related to indigenous peoples' rights,[55] including as regards the approval of a law on community radio,[56] despite a 2012 Constitutional Court decision ordering Congress to regulate the access of indigenous peoples to radio frequencies. [57] Frequencies continue to be concentrated in the hands of only a few media outlets.

46. In response to indigenous peoples' demands, the Government has shown an openness to directly meet with indigenous authorities. The discussion of key issues regarding the rights of indigenous peoples has been facilitated by the appointment of a Kaqchikel woman as the Minister of Labour and Social Security and of a man of African descent as the Minister of Environment and Natural Resources.

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[49] File C-13005-2013-00139, judgment of 22 July 2016, p. 496.

[50] Constitutional Court, file 5294-2013; consolidated files 5705-2013 and 5713-2013; file 411-2014; file 3753-2014; file 2567-2015; consolidated files 3695-2014 and 3738-2014.

[51] Constitutional Court, file 970-2016; file 2275-2014; and file 3068-2015.

[52] Constitutional Court, consolidated files 4783-2013, 4812-2013 and 4813-2013.

[53] Constitutional Court, file 1467-2014.

[54] Supreme Court, injunction order 1672-2016, Official 5, 23 September 2016. Case supported by the Maya Programme.

[55] See CERD/C/GTM/CO/14-15, para. 9.

[56] Case supported by the Maya Programme.

[57] Constitutional Court, file 38-2011, March 2012. See also A/HRC/22/17/Add.1, para. 64.

### 2. Lands, natural resources and extractive and development projects

47. Despite the constitutional recognition of the right of indigenous peoples to their lands and territories (art. 67 of the Constitution), there are numerous problems related to land tenure security, including irregularities in land acquisition and the lack of a reliable land registry (see para. 63 below).

48. In June, the Constitutional Court ordered the municipality of San José Poaquil, Chimaltenango, to return the administration of community lands to the Cofradía de San José Poaquil, the indigenous organization that had traditionally managed the lands.[58] An indigenous council for land management, headed by the organization, was established in order to help implement the judgment.

49. The legal recognition of indigenous peoples' traditional forms of organization is one way to defend and ensure the full exercise of their collective rights. Moreover, the Constitutional Court affirmed that it was not acceptable to condition the recognition of community organizations that represent indigenous peoples on their prior inscription in the local municipality.[59]

50. Of continued concern is the impact on human rights that natural resources exploitation projects under licenses or permits issued in previous years, including mining and hydroelectric projects, have had. The State has yet to ensure adequate consultation procedures for future permits or those under consideration to guarantee protection of the rights of affected indigenous peoples, including rights to lands, territories and natural resources.

51. The Ministry of Energy and Mines and the Ministry of Labour and Social Security, in coordination with the cabinet on indigenous peoples and interculturality, are preparing initial measures in the Ixil region to implement three Constitutional Court judgments from 2015 ordering consultation.[60] There are still many difficulties in translating consultation procedures into practice, in part due to a lack of clarity regarding those procedures. The Ministry of Labour and Social Security has initiated a dialogue to gather perspectives on the basic standards on consultation with indigenous peoples, although some indigenous peoples have continued to express a lack of trust in these processes. The Government has only limited capacity to identify the impacts of the projects, through appropriate social and environmental impact studies, and to develop appropriate mitigation measures.

52. The High Commissioner observed shortcomings of the Government in the area of enforcing laws and regulations to prevent human rights abuse by companies. In the case of the El Tambor mine in San José del Golfo and San Pedro Ayampuc, the company involved ignored an injunction order issued by the Supreme Court in February and continued to exploit the mine site for three months until a second order was issued by the Constitutional Court in May. The Attorney General's Office is investigating the company for illegal extraction of minerals.

53. There are latent situations of conflict resulting from extractive projects in several indigenous areas, which could deteriorate at any moment. For example, in the indigenous communities in Ixquisis, Huehuetenango, and in San Pablo, San Marcos, the construction of hydroelectric projects has advanced despite the concerns expressed by the communities, resulting in divisions within the communities and tensions with local government and the companies involved.

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[58] File 2275-2014, judgment, 6 June 2016. Case supported by the Maya Programme.
[59] File 3753-2014, p. 21.
[60] See A/HRC/31/3/Add.1, para. 25.

## E. Violence against women

54. Violence against women remains a serious problem in Guatemala (see para. 26 above). In one case, an 8-year-old girl was raped and asphyxiated by four adults in the department of Zacapa.

55. In 2016, the 4,327 cases involving crimes of femicide and other forms of violence against women were submitted to the judiciary — an increase of 38 per cent over the number of cases submitted in 2015.[61] The specialized tribunals on crimes of femicide and violence against women issued 1,908 judgments in 2016, an increase of 29 per cent from 2015.[62]

56. The High Commissioner is gravely concerned about the 55 girls that reportedly disappeared in September, October and November 2016 from centres where they were living under State custody. The Ombudsman for Human Rights presented a criminal complaint to the Attorney General's Office requesting an investigation into whether the disappearances may be related to human trafficking. The Secretariat on Social Well-being is coordinating efforts to address the issue.

57. The Supreme Court approved measures to strengthen the integration of human rights and gender perspective into the judgments of the ordinary and specialized courts, in follow-up to conclusions drawn by OHCHR-Guatemala.[63] These actions included training judges and reviewing the curriculum for legal training on this subject.

58. The High Commissioner welcomes the approval in January of the law on the immediate search of missing women,[64] which requires that cases of disappeared women be registered by the Attorney General's Office and by the National Civil Police, and creates a search mechanism that involves the participation of local community-based teams. He also welcomes the creation of a special office on femicide within the Attorney General's Office.[65]

59. The National Registry of Persons reported an alarming 1,103 pregnancies of girls between 10 and 14 years old, and 37,655 pregnancies of girls between 15 and 19 years old.[66] Urgent measures are needed to address this problem, including measures to prevent sexual violence, to facilitate comprehensive sexuality education and access to sexual and reproductive health services, and to strengthen inter-institutional coordination.

60. An important draft public policy on just and transformative reparations in cases of sexual violence, forced pregnancy and forced marriage among children and adolescents, spearheaded by Congresswoman Sandra Morán, has been submitted to the Presidential Secretariat for Women for its consideration and approval.

## F. Rights of lesbian, gay, bisexual, transgender and intersex people

61. The High Commissioner is concerned about the persistent discrimination of and violence against people on the basis of their sexual orientation and gender identity.[67]

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[61] Judiciary, letter to OHCHR-Guatemala, data for the period January-August 2015 and 2016.
[62] Ibid.
[63] See A/HRC/31/3/Add.1, para. 48.
[64] Decree 9-2016.
[65] Decree 18-2016.
[66] Observatory on Sexual and Reproductive Health, data for the period January-July 2016.
[67] See www.ohchr.org.gt/documentos/comunicados/20161208_PDH_OACNUDH_Graves_hechos_contra_mujeres_trans.pdf.

Lesbian, gay, bisexual, transgender and intersex people are stigmatized by the public at large and the media, as in the case of Congresswoman Morán, who was targeted following her support for the law on protecting child victims of sexual violence (see para. 60 above). Another troubling case is that of Luis Aldo García, who was attacked in July because of his sexual orientation and died one month later. The investigations of the Attorney General's Office should determine whether his death was caused by the attacks.

62. Despite the approval in November 2015 by the Ministry of Public Health and Social Security of the strategy on comprehensive and differentiated health services for transgender people, no budget has yet been assigned to the strategy. The High Commissioner notes as positive that COPREDEH is developing a public policy on the rights of lesbian, gay, bisexual, transgender and intersex people.

## G. Economic and social rights

### 1. Land, monoculture plantations and water

63. There are currently 1,448 land conflicts in Guatemala,[68] including those related to overlapping land rights, territorial limits, regularization and occupation of lands. The institutions responsible for addressing land-related conflicts, such as the Secretariat of Agrarian Affairs and the Land Fund (FONTIERRAS), continue to lack sufficient resources.

64. Forced evictions in the context of land conflicts remain a subject of concern. The High Commissioner welcomes the purchase of lands to resettle Q'eq'chi families forcibly removed in 2011 from lands in the Polochic Valley, bringing the total number of families resettled to 221.[69] However, more than half of the 600 families evicted continue to lack access to lands necessary for their survival. There is still a need to provide adequate social services to the resettled families.

65. The agricultural sector represents 13.6 per cent of the total gross domestic product[70] and 26.4 per cent of all exports.[71] OHCHR-Guatemala continues to receive complaints about the negative impact of monoculture activities, which are expanding throughout the country. Complaints include irregular land purchase agreements, the impact of fumigation on food grown in neighbouring farms, and the diversion and pollution of rivers.

66. Concerns regarding water use were raised in the framework of the "march for water" (see para. 11 above) and during the 25 consultations carried out throughout the country by civil society and academic and government institutions. Only 64.4 per cent of the population in rural areas has readily available access to water for domestic use.[72] In November, various draft bills on issues related to water were presented before Congress but have to yet advance. In 2016, the Minister of Environment and Natural Resources filed before the Attorney General's Office 41 complaints: 27 related to water diversion, 6 about river pollution, 3 about open-air landfills and 3 about air pollution.

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[68] Information provided by the Secretariat of Agrarian Affairs to OHCHR, 17 October 2016.

[69] See A/HRC/31/3/Add.1, para. 64.

[70] Bank of Guatemala, Department of Macroeconomic Statistics, *Producto interno bruto trimestral: Segundo trimester de 2016* (2016), p. 6. Available from https://www.banguat.gob.gt/cuentasnac/2T_2016_JM.pdf.

[71] Bank of Guatemala, note on international exports. Available from www.banguat.gob.gt/inc/main.asp?id=66312&aud=1&lang=1.

[72] National Statistics Institute, National Survey of Living Conditions, p. 44. Available from www.ine.gob.gt/sistema/uploads/2015/12/11/vjNVdb4lZswOj0ZtuivPIcaAXet8LZqZ.pdf.

67. There is an ongoing need to develop measures, in compliance with international human rights standards, to address the conflicts faced by many indigenous and campesino communities related to the administration of protected areas. Many such sites have been historically inhabited or used by indigenous peoples, such as the Semuc Champey and Candelaria caves, which are tourist sites, or have been used and settled by communities displaced during the armed conflict, such as in the Laguna del Tigre and Sierra del Lacandón national parks.

### 2. Labour rights

68. The debate surrounding the State's capacity to fulfil its contractual obligations to unionized government employees, including regarding wages and benefits, has intensified and with it the public criticism against some trade unionists, including accusations of alleged corruption in collective labour agreement negotiations.

69. Only 1 of every 10 employees at the national level is unionized; the majority of unionized employees work in the public administration sector. The small proportion of unionized workers is due to, among other things, the stigmatization of and retaliation against trade unionists. Among the working-age population, the employment rate is 59.6 per cent, although 69.8 per cent of the jobs held are in the informal sector.[73]

70. The High Commissioner welcomes the President's decision in February to reject proposals to lower the minimum wage in four municipalities to promote manufacturing jobs. However, low wages remain a matter of concern.[74] The average monthly income at the national level is $279.30,[75] which covers only 29.4 per cent of the basic vital basket. Within the agricultural sector, the largest employment sector, the average monthly income is $153.[76] Lack of compliance with the minimum wage, including among domestic workers, continues to be reported.

71. OHCHR-Guatemala remains concerned about the situation of workers in several cases. Nine former worker-tenant families in the Finca La Soledad in El Tumbador, San Marcos, are at risk of eviction, since they have never been granted property titles for the land plots they were given in payment for their labour while working at the plantation. For some 15 years tenant farmers at the Las Delicias coffee plantation, in the municipality of El Tumbador, have denounced the lack of compliance with the minimum wage and other labour rights. About 250 elderly workers on the San Gregorio Piedra Parada estate have not been able to retire because the employer did not transfer to the Guatemalan social security agency the records of time worked towards retirement and pension benefits. Forty-three unionized workers of the Koa Modas textile company, dismissed in 2013 when forming a trade union, have not yet been paid outstanding wages and other entitlements since their reinstatement in 2014, despite a labour court order.

### 3. Rights to health and to food

72. The health sector confronts serious and persistent challenges, such as shortages of medicine, lack of medical staff, deficient and deteriorating infrastructure, corruption allegations and low levels of health-care coverage.

73. The High Commissioner welcomes the decision of the new Minister of Public Health and Social Security to establish an office to investigate cases of corruption within

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[73] National Statistics Institute, National Survey on employment and income, ENEI 1-2016, pp. 47-52.
[74] See A/HRC/31/3/Add.1, paras. 65-66.
[75] National Statistics Institute, National Survey on employment and income, ENEI 1-2016, pp. 37-40.
[76] Ibid, p. 60.

the Ministry, with the support of the Attorney General's Office and CICIG. Also of note are the Minister's efforts to implement an inclusive and intercultural health-care model, aimed at progressively increasing access to adequate primary health care.

74. The El Niño phenomenon has heightened the malnutrition crisis, especially in the south-eastern regions, where more than 75.2 per cent of the corn harvest of 2016 was lost.[77] Alarmingly, 12,600 cases of acute malnutrition in children under 5 have been reported to date in 2016, resulting in 113 deaths (a decrease of 18 cases as compared to last year).[78]

75. Still outstanding is the development of an inter-institutional administrative protocol on children suffering from chronic malnutrition, as ordered by the Constitutional Court in 2016, which called upon the State to develop urgent responses to this problem.[79] In March, the national strategy to prevent chronic malnutrition for the period 2016-2020 was launched, with a goal of reducing chronic malnutrition by 10 per cent over the next four years.

# IV. Activities of the office of the United Nations High Commissioner for Human Rights in Guatemala

76. OHCHR-Guatemala carried out 121 missions, during which it met with civil representatives, indigenous communities, human rights defenders and their families, as well as with witnesses of human rights violations. Several of the missions were conducted with the Ombudsman for Human Rights to monitor the issues of pretrial detention and the human rights impact of monoculture activities.

77. OHCHR-Guatemala assisted the Congress in harmonizing draft bills with international standards, including bills on the abolition of the death penalty, the legal recognition of community radio, the protection of the rights of persons with disabilities; the migration code; the regulation of water resources; and the laws on injunction, habeas corpus and constitutionality, and impeachment.

78. In the framework of the national dialogue on justice reform, OHCHR-Guatemala provided the technical secretariat of the process with guidance on relevant human rights standards. It also facilitated the participation of indigenous representatives in the process.

79. OHCHR-Guatemala provided training on international human rights standards in the area of administration of justice for judges dealing with high-risk cases, magistrates and legal clerks of the Constitutional Court and the Supreme Court, and for officials in the Attorney General's Office, namely those in the sections for injunctions and for human rights.

80. In coordination with the School of Judicial Studies and the unit responsible for the control, monitoring and evaluation of the specialized tribunals of the judiciary, and in coordination with the OHCHR Women's Rights and Gender Section, OHCHR-Guatemala developed and presented a toolkit for incorporating a human rights and gender-based approach into judgments related to femicide and other forms of violence against women.

81. OHCHR-Guatemala organized a workshop with the participation of international and national experts to share experiences from Latin America regarding international mechanisms aimed at combating impunity and protecting human rights.

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[77] Information published by the Ministry of Agriculture, Livestock and Food.

[78] Food and Nutritional Security Secretariat, data on acute malnutrition, week 46. Available from www.siinsan.gob.gt/SemanasSalaSituacional.

[79] File 5962, 4474, 3380-2014 and 277-2015. See also A/HRC/25/19/Add.1, para. 69.

82. Together with the Ombudsman for Human Rights, OHCHR-Guatemala developed a study on pretrial detention and its impact on human rights, which was shared with and supported by the unit responsible for coordinating the modernization of the justice sector.

83. In coordination with the Directorate-General of Private Security Services, OHCHR-Guatemala prepared a study on the implementation of the law governing private security.

84. OHCHR-Guatemala carried out a study with the Ombudsman for Human Rights on protection measures for human rights defenders. It also prepared a study on the misuse of criminal processes against human rights defenders.

85. OHCHR-Guatemala provided technical assistance to COPREDEH and civil society organizations for the development of a public policy on the protection of human rights defenders.

86. OHCHR-Guatemala organized discussions on freedom of expression, including for those involved in community radio and for young defenders, with the participation of international experts. It also co-organized, with the Special Rapporteur for Freedom of Expression of the Organization of American States, training sessions on the protection of journalists.

87. OHCHR-Guatemala assisted COPREDEH in training of representatives of Government, civil society and business enterprises on the Guiding Principles on Business and Human Rights, with a view to facilitating the development of a related policy.

88. In follow up to the International Decade for People of African Descent, OHCHR-Guatemala, in coordination with the presidential commission against racial discrimination, made progress in the preparation of a diagnostic study on people of Garifuna and African descent, which will contribute to the development of a national action plan.

89. OHCHR-Guatemala, through its Maya Programme, has provided technical assistance for indigenous people and the Government in relation to 11 cases, involving the defence of the right to land and resources, the protection of traditional knowledge of textile weaving, the legal recognition of indigenous community radio, and the recognition of culturally appropriate health services.

90. OHCHR-Guatemala provided technical assistance to the Ministry of Environment and Natural Resources to incorporate international standards into environmental impact studies.

91. Together with the International Labour Organization (ILO), OHCHR-Guatemala provided technical assistance to the Ministry of Labour and Social Security to develop a protocol to monitor the situation of sweatshop workers, and helped the Attorney General's Office in the revision of an internal instruction on the prosecution of crimes of disobedience.

92. OHCHR-Guatemala provided training for trade union leaders and, together with ILO and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), conducted activities to promote the ratification of the Domestic Workers Convention, 2011 (No. 189) of ILO.

93. Together with the Food and Agricultural Organization of the United Nations and the Ombudsman for Human Rights, OHCHR-Guatemala held a workshop on public policies related to the right to food, and provided capacity-building for a network of civil society organizations on economic, social and cultural rights.

94. OHCHR-Guatemala continued to promote national human rights debates through interviews, press releases, press conferences and meetings with journalists, and the presentation of its annual report. It collaborated in training sessions for journalists on

security and justice issues organized by the University of San Carlos in Guatemala with the support of the security and justice sector reform project of the United States Agency for International Development.

95. Fifteen training sessions on human rights education were held for teachers, students and librarians. OHCHR-Guatemala provided technical assistance for the round table on education for peace, memory and human rights.

## V. Cooperation with United Nations human rights mechanisms

96. OHCHR-Guatemala provided technical assistance to COPREDEH to strengthen its reporting capacity to United Nations human rights mechanisms, mainly for the universal periodic review and treaty bodies, including through training on the development of a human rights recommendations database.

97. It supported COPREDEH and civil society organizations for the preparation of the national report and stakeholders' submissions for the universal periodic review, scheduled for the end of 2017.

98. OHCHR-Guatemala provided technical assistance to civil society organizations for the preparation of shadow reports to the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Discrimination against Women.

99. A member of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provided technical assistance to Congress, with the support of the Ombudsman for Human Rights and OHCHR-Guatemala, in the context of proposed reforms to the law on the national mechanism on prevention of torture.

## VI. Recommendations

100. **The United Nations High Commissioner for Human Rights:**

(a) **Urges Congress to approve the constitutional reforms in the area of justice, including in relation to indigenous jurisdiction, and calls upon the judiciary and the Attorney General's Office to adopt measures to ensure the effective implementation of and follow-up to the reforms of the foundational law of the Attorney General's Office and the law on the judicial career and urges relevant authorities to ensure adequate funding towards that end;**

(b) **Urges the judiciary to develop and implement a protection protocol for cases of threats and attacks against judges, especially those involved in high-impact cases, with the goal of protecting their security of person and that of their family in a systematic and comprehensive manner;**

(c) **Recommends that Congress adopt draft bill 5100 for the definitive abolition of the death penalty;**

(d) **Urges the Ministry of the Interior to develop measures, including through amendments to the law on the National Civil Police, to strengthen the professional career track of the police and internal controls of police conduct;**

(e) **Calls upon the Ministry of the Interior, in particular the Directorate-General of Private Security Services, to take immediate measures to ensure that all private security companies are registered, as required by law, and that their activities are properly monitored;**

**(f) Recommends that the justice system, through the unit responsible for the modernization of the justice sector, address the problem of the overuse of pretrial detention, as well as the delays in the criminal procedures of people in pretrial detention, in accordance with the recommendations made by OHCHR-Guatemala and the Ombudsman for Human Rights;**

**(g) Recommends that the Ministry of the Interior, the Attorney General's Office and COPREDEH to strengthen the risk-analysis procedure and the protection measures for human rights defenders, taking due account of gender and cultural aspects;**

**(h) Urges COPREDEH to develop a public policy on human rights defenders with the full and effective participation of civil society organizations, taking into account the diversity of human rights defenders;**

**(i) Urges the fulfilment of adequate consultation processes to protect the rights of indigenous peoples, in accordance with international standards, as a prerequisite to issuing any licence or permit for natural resources exploitation and development projects affecting indigenous peoples;**

**(j) Calls upon the Superintendent of Telecommunications to develop an independent study on available radio frequencies, with a view towards adopting necessary reforms to ensure that indigenous and community radio broadcasters can operate legally;**

**(k) Recommends developing, in consultation with indigenous peoples, measures to ensure respect for the traditional forms of natural resource management within protected areas where collective lands exist, in accordance with international standards;**

**(l) Recommends that the implementation of the national strategy on the prevention of chronic malnutrition take into account the Constitutional Court's observations in relation to the structural problems that contribute to malnutrition;**

**(m) Urges Congress to promote legal reforms to allow the Ministry of Labour and Social Security, in accordance with international standards, to apply sanctions in cases of violations of labour standards;**

**(n) Recommends that Congress establish an adequate legal framework, including the creation of an autonomous regulatory entity, that guarantees the right to access to water, taking into account international human rights standards and the precautionary principle.**